

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>KEVIN C. FLYNN</p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2023-AQ-02 NO. 2023-SW-01</p>
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TO: Kevin C. Flynn
1724 Ginkgo Avenue
Wellman, Iowa 52356

I. SUMMARY

This administrative order (Order) requires Kevin Flynn to comply with the provision in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Levi Fisher, DNR Air Quality
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/343-7063

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

Appeal or Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that division and Iowa Code section; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter

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10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

III. STATEMENT OF FACTS

1. Kevin Flynn owns the West Chester Lumberyard site, a large one-story industrial and storage structure built mostly of wood, cement, cement board siding and metal in 1947. The site is located at 108 Railroad Street in West Chester, Iowa. The primary structure on this site was 11,208 square feet.

2. On February 23, 2022, Ryan Stouder of DNR Field Office 6 received a complaint filed with the field office that Mr. Flynn was demolishing a structure and the demolition debris was burned onsite in West Chester, Iowa.

3. On February 24, 2022, Mr. Stouder visited the property and spoke with Mr. Flynn, requiring Mr. Flynn to halt demolition and extinguish the onsite fire. Mr. Stouder inquired about the notification of the demolition, and Mr. Flynn said he contacted the Washington County Communication Center and the local fire department.

4. On February 25, 2022, DNR issued a Notice of Violation letter to Mr. Flynn that included the following citations: 1) improper waste disposal, 2) open burning, 3) failure to thoroughly inspect facility, and 4) failure to submit a demolition notification. The Notice of Violation required Mr. Flynn to stop all burning and dumping. And the Notice mentioned that the violations may be referred to DNR Legal Services for further enforcement.

5. On March 2, 2022, DNR Air Quality environmental specialist senior, Tom Wuehr and DNR Air Quality environmental specialist, Levi Fisher, inspected the West Chester site. During the inspection they observed an active fire and much of the remaining structure was demolished. They observed large amount of demolition debris and disturbed building material. Mr. Wuehr collected nine samples of the suspect material for laboratory testing. Two of the samples contained regulated amounts of asbestos, with one sample containing 2% asbestos and the other sample containing 18% asbestos.

6. On March 22, 2022, DNR contacted Mr. Flynn by telephone. Mr. Flynn stated there had not been a thorough asbestos inspection prior to the demolition and no demolition notification had been submitted to the DNR. Mr. Flynn was directed to have the site decontaminated of asbestos. He was given two options to meet this requirement. Mr. Flynn's first option was to hire a certified abatement contractor to complete the work. Mr. Flynn's second option was to take a 40-hour asbestos contractor/supervisor class and be certified to decontaminate the property himself.

7. On March 30, 2022, DNR issued a Notice of Violation letter to Mr. Flynn for the following violations: 1) failure to conduct a thorough inspection; 2) failure to notify of the demolition; 3) failure to follow emission control procedures for asbestos

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containing material; 4) failure to keep all asbestos containing material adequately wet; and 5) failure to have a trained supervisor onsite during the project. Mr. Flynn was instructed to restrict access to the site until decontamination was completed. M. Flynn was also directed to send a written response detailing how he was going to meet decontamination requirements. The Notice of Violation mentioned that the letter did not preclude further action. DNR never received a written response as directed.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Kevin Flynn open burned demolition debris. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. Mr. Flynn stated that no asbestos inspection was conducted prior to the demolition of the lumberyard building. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(b)(1) requires written notification to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. Mr. Flynn stated that he did not submit a notification prior to the demolition of the lumberyard. The above facts indicate a violation of this provision.

6. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that Mr. Flynn was not in compliance with these provisions when the demolition occurred.

7. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would

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break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. DNR Air Quality personnel observed regulated asbestos containing material that had not been removed prior to demolition activities. The facts in this case indicate a violation of this provision.

8. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. Proper asbestos abatement did not occur prior to the demolition project. The facts in this case indicate a violation of this provision.

9. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition project. The above facts indicate noncompliance with this provision.

10. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

11. Iowa Code section 455B.307 and 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. During the DNR's inspection of the demolition site, improper disposal of debris and disturbed building were observed. As the property owner, Mr. Flynn allowed the disposal of debris. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR orders Kevin Flynn to do the following:

1. Obtain the services of a permitted asbestos abatement company to supervise cleanup of the site and haul all remaining material to the landfill as asbestos-containing waste;
2. Submit an asbestos notification to the DNR prior to starting the cleanup;
3. Complete the cleanup within 30 days of the date the Director signs this Order;
4. Submit landfill receipts within 15 days of completing the cleanup; and
5. Pay an administrative penalty in the amount of \$10,000.00 within 60 days of the date the Director signs this Order.

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VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a \$10,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available. The cost of asbestos abatement would have been at least several thousand dollars for a structure of this size with cement board (transite) siding. Since the structure was not property abated for asbestos, Mr. Flynn gained economic benefit by avoiding these abatement costs. In addition, Mr. Flynn illegally burned the material and therefore gained an economic benefit by avoiding the cost of landfill disposal fees. Based on these considerations \$4,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Asbestos is known to cause cancer and is a hazardous air pollutant. The demolition activity would have released asbestos fibers into the air. In addition, Mr. Flynn open burned the demolition material and burning asbestos containing material would have caused significant asbestos release to those exposed to the smoke. Burning demolition material also produces other harmful air pollutants that impact human health. Despite being instructed by DNR to cease burning, Mr. Flynn allowed a fire to burn for several more days. These violations threaten the integrity of the regulatory program because compliance with the open burning, solid waste, and asbestos regulations is required of all persons in this state. Therefore, \$3,000.00 is assessed for this factor.

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Culpability – As the owner of the property, Mr. Flynn has a duty to remain knowledgeable of DNR’s rules for asbestos removal and open burning. The fact that Flynn continued to demolish the structure and open burn the material after being directed by the DNR to stop constitutes a deliberate disregard for the DNR and the health and safety of the public. Based on the above considerations, \$3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources